

Judiciary Committee

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JUDICIARY COMMITTEE

LEGISLATION ENACTED

residency restrictions; schools; child care (S.B. 1011) – Chapter 6

Expands the persons subject to 1,000 feet residency restrictions from a school or child care facility to include persons convicted of an offense in another jurisdiction that if committed in Arizona would be considered a dangerous crime against children and stipulates how the 1,000 feet restriction is measured.

arrest warrants; child support; fiduciary (S.B. 1013) – Chapter 7

Enables the use of electronic processing of child support and fiduciary arrest warrants.

unlawful sexual conduct; correctional facilities (S.B. 1016) – Chapter 209

Clarifies that the offense of unlawful sexual conduct with an offender requires intent and adds knowingly as a culpable mental state.

writ of restitution; judgment (S.B. 1018) – Chapter 8

Clarifies, that when the court issues a writ of restitution, the defendant's guilt is in regard to a forcible entry and detainer action, commonly known as eviction.

community notification. (S.B. 1021) – Chapter 9

Makes a technical change to the community notification statute.

jury fees; technical correction (S.B. 1022) – Chapter 76

Corrects an inaccurate statutory reference with regard to per diem expenses granted to persons serving on a state grand jury.

cities; campaign finance; website (S.B. 1024) – Chapter 184

SEE GOVERNMENT COMMITTEE.

court reporter certification (S.B. 1050) – Chapter 54

SEE COMMERCE & ECONOMIC DEVELOPMENT COMMITTEE.

~~elections; counting center; observation~~ (NOW: elections; observation; counting center) (S.B. 1053) – Chapter 273 E

Effective June 19, 2008, changes election law as follows: 1) allows the proceedings at the counting center to be observed by up to three additional people and establishes a selection procedure for the observers; 2) changes, without adjusting the timeframes, the time period to deliver official early ballots to the elections official and for an elector or registrant to respond to notices regarding

JUDICIARY COMMITTEE (Cont'd.)

voter registration and to request an early ballot; 3) prohibits an early ballot from being distributed before the beginning of early voting and requires the early voting locations to be open and available when the county sends the early ballots; 4) allows a federal write-in early ballot request received after the election deadline to serve as a valid voter registration form for any subsequent election; 5) requires, for nomination petitions, the filing for special district elections to be with the county election officer instead of the Secretary of State (SOS) and circulators to verify the signature of a signer who is not affiliated with a political party; 6) removes SOS requirements to return each computer election program within six months after an election; 7) requires political committees to include the official serial number on the statement of organization to be replaced with the ballot proposition number by the SOS; 8) removes a legislative candidate's ability to file campaign finance reports with the county of the candidate's residence; 9) requires, for initiatives and referendums, the person or organization to file its statement of organization or its signed exemption statement at the time of application; 10) changes, for a vacant position in the office of representative in Congress, the timeline for filing a nomination paper, petition or court action, the mailing of ballots and the calling of a special election and specifies requirements for filling a vacancy under extraordinary circumstances; 11) allows the public to access the unique identification number that is assigned to each individual voter in the statewide database; and 12) makes conforming changes to the primary election statutes for a biennial election and consolidated elections.

civil rights advisory board; continuation (S.B. 1055) – Chapter 23

Retroactive to July 1, 2008, the Arizona Civil Rights Advisory Board is continued until July 1, 2018.

law enforcement merit system; continuation (S.B. 1056) – Chapter 10

Retroactive to July 1, 2008, the Law Enforcement Merit System Council is continued until July 1, 2015.

law enforcement officer; definition; representation (S.B. 1057) – Chapter 40

Excludes a probation, detention or corrections employee during the employee's probationary period from interview procedures for an interview that could result in dismissal, demotion or suspension.

elections; counting center video; multiple (S.B. 1059) – Chapter 41

Corrects the conflicting enactment with regard to live video recording by repealing Laws 2007, Chapter 259.

escape; definition (S.B. 1067) – Chapter 24

Excludes, when determining historical prior felony convictions, time spent on escape status when calculating if a class 2 or 3 felony was committed within the preceding ten years or if a class 4, 5 or 6 felony was committed within five years of the present offense. Defines escape and rectifies conflicting enactments relating to dangerous and repetitive offenders.

JUDICIARY COMMITTEE (Cont'd.)

criminal appeals (S.B. 1068) – Chapter 25

Restricts a defendant's right to appeal if the defendant's absence prevented sentencing from occurring 90 days after conviction and the defendant fails to prove by clear and convincing evidence at the time of sentencing that the absence was involuntary.

concealed weapons permit; qualifications; instructors (S.B. 1070) – Chapter 263

Modifies, for an applicant seeking a permit to carry a concealed weapon, the documentation requirement that demonstrates completion of a firearm safety training program within the past five years. Modifies firearm safety instructor qualifications to include specific certifications.

sample ballot stripe; primary elections (S.B. 1071) – Chapter 11 E

Beginning April 4, 2008, allows the official sample primary election ballot to be printed on white paper with a different colored stripe for each party represented on the ballot.

improvised explosive device; definition (S.B. 1153) – Chapter 274

Defines "improvised explosive device" (IED) as a device that incorporates explosive or destructive, lethal, noxious, pyrotechnic or incendiary chemicals that are designed to destroy, disfigure, terrify or harass and adds IED to the definitions of a simulated explosive device (SED) and prohibited weapon. Increases the penalty from a class 1 misdemeanor to a class 5 felony for misconduct involving a SED. Requires, for a violation of misconduct involving weapons committed with dry ice, an intent to cause injury, death or damage to the property of another person.

judicial performance reviews; court commissioners (S.B. 1186) – Chapter 82

Requires the Supreme Court (Court) to establish a performance review process for superior court commissioners in Pima and Maricopa counties to be maintained on the Court's website.

DNA testing; arrest (S.B. 1332) – Chapter 276

Applies the requirement that a person submit a DNA sample within five days of release if charged with a felony or specified misdemeanor offense, to a person who is summoned to appear in court for an initial appearance. Inserts, into the juvenile statutes, the offenses that require the submission of a DNA sample upon arrest.

sexual conduct; minor; school teacher (S.B. 1336) – Chapter 210

Classifies, as a class 2 felony, sexual conduct with a minor who is at least 15 years of age if the perpetrator is a clergyman, priest or the minor's teacher.

accomplice liability (S.B. 1354) – Chapter 296

Expands accomplice liability to include any offense that is a natural and probable or reasonably foreseeable consequence of the offense for which that person was an accomplice.

JUDICIARY COMMITTEE (Cont'd.)

attempted dangerous crimes against children (S.B. 1355) – Chapter 195

Classifies, if a victim is a minor under 12 years of age, the following offenses as a dangerous crime against children in the second degree: 1) second degree murder; 2) sexual assault; 3) sexual conduct; and 4) manufacturing methamphetamine under circumstances that cause physical injury.

biological evidence; retention; preservation (S.B. 1412) – Chapter 282

Beginning January 1, 2009, requires identified biological evidence that is secured in connection with a felony sexual offense or homicide to be retained for specified periods of time. Allows the disposal of bulk evidence if representative samples are retained and establishes notification procedures to allow the disposal of physical evidence after the conclusion or filing expiration of the convicted defendant's direct appeal and first postconviction relief proceeding. Specifies fingerprint requirements for certain offenses if the person arrested refuses to voluntarily provide fingerprints.

~~Vietnam Veterans' Memorial Day~~ (NOW: marriage; one man; one woman) (S.C.R. 1042)

SEE PUBLIC SAFETY & HUMAN SERVICES COMMITTEE.

internet age misrepresentation (H.B. 2129) – Chapter 97

Establishes the offense of unlawful age misrepresentation as an adult using an electronic communication device to knowingly misrepresent the person's age for the purpose of committing a sexual offense. Classifies the offense as a class 3 felony, subject to sentencing as a dangerous crime against children if the victim is under 15 years of age, and requires a person to register as a sex offender upon conviction.

constable ethics; board; membership (H.B. 2190) – Chapter 171

Requires the Arizona Multihousing Association (Association) member who serves on the Constable Ethics Standards and Training Board to be an Association board member at the time of appointment by the Governor.

sentencing; reorganization (H.B. 2207) – Chapter 301

Beginning January 1, 2009, reorganizes and makes numerous changes to Arizona's sentencing statutes.

uniformed overseas voters; electronic transmittal (H.B. 2213) – Chapter 62

Expands, to an electronic format, the method by which voters subject to the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) may vote by early ballot and provides that a person who duplicates a UOCAVA voter's completed ballot transmitted by an electronic format does not commit an unlawful voting act.

JUDICIARY COMMITTEE (Cont'd.)

electronic communications; harassment; order; protection (H.B. 2248) – Chapter 205

Requires the court to review any evidence of harassment by electronic contact or communication when determining whether to issue a petition for an injunction against harassment or an order of protection.

precinct registers; information; fee (H.B. 2257) – Chapter 50

Decreases, from ten cents per name to one cent per name, the amount charged by the county recorder for an official precinct list when provided in an electronic data medium.

initiative and referendum amendments (H.B. 2288) – Chapter 244 E

Effective May 27, 2008, makes changes to election law as follows: 1) establishes a process for suspending a political committee that has failed to file three consecutive campaign finance reports with the Secretary of State's (SOS) office, excluding Clean Elections reports; 2) classifies, as a class 1 misdemeanor, inducing a person to sign a petition by knowingly misrepresenting the measure; 3) changes the filing and notarization requirements for an argument measure in the publicity pamphlet; and 4) changes the timeframe for the county recorder and SOS to process, disqualify and verify signatures for initiative and referendum petitions.

~~identity theft; factual innocence~~ (NOW: factual innocence; judicial determination; procedure) (H.B. 2321) – Chapter 237

Establishes procedures for judicial determinations of factual innocence or factual improper party status, if a person's personal identifying information was taken and the person's name was used by another person who was implicated in a criminal offense or the name was entered into a judgment on record in a criminal case or civil action.

condominiums; planned communities; political petitions (H.B. 2440) – Chapter 238

SEE GOVERNMENT COMMITTEE.

aggravated assault; constables. (H.B. 2444) – Chapter 179

Classifies, as aggravated assault, assault against a constable or a person summoned and directed by the constable while engaged in the execution of any official duties if the person commits the assault knowing or having reason to know the victim is a constable or a person summoned and directed by the constable.

election security provisions (H.B. 2451) – Chapter 110

Changes election security law by requiring: 1) observation of county management software or computer programming; 2) sample ballots to contain a particular statement; 3) comparison of votes cast on the machine or tabulator with the votes cast on the poll list and the provisional ballots cast; 4) certain qualifications of persons engaged in the processing and counting of ballots; 5) the maintenance of the chain of custody record for all election equipment and ballots during early voting through the completion of provisional voting tabulation; and 6) duplication and substitution of an early ballot that is damaged or defective that cannot be properly counted by the equipment. Rectifies conflicting enactments relating to live video recording.

redaction orders; expiration; notice; funds (H.B. 2478) – Chapter 113

JUDICIARY COMMITTEE (Cont'd.)

Requires county officers to mail notification to specific persons or their employing agency of the pending expiration of an order that prohibits public access to their personal identifying information. Allows monies in the Anti-Racketeering Revolving Fund to be used for the payment of relocation expenses of any law enforcement officer and the officer's immediate family if the law enforcement officer is the victim of a bona fide threat because of the officer's duties.

aggravated luring; minors; sexual exploitation (H.B. 2480) – Chapter 219

Establishes, as a class 2 felony, the offense of aggravated luring of a minor for sexual exploitation as a person who uses an electronic communication device to transmit a visual depiction of material that is harmful to minors and offers or solicits sexual conduct with a minor by means of the communication. Requires registration as a sex offender upon conviction. Provides a defense to a prosecution for defendants under 19 years of age if the conduct is consensual.

prohibited possessors; undocumented aliens (H.B. 2486/S.B. 1408) – Chapter 3

Removes references to federal law with regard to illegal aliens possessing firearms. Enumerates as prohibited possessors, with exceptions, undocumented and nonimmigrant aliens traveling with or without documentation in Arizona for business, pleasure or study while maintaining a foreign residence.

justice courts; criminal actions; jurisdiction (H.B. 2554) – Chapter 138

Excludes any assessments or time payment fees from being considered part of the fine for purposes of determining jurisdiction in a justice of the peace court.

constables; peace officers status (H.B. 2623) – Chapter 150

Specifies that a constable has peace officer status only in the performance of the constable's official duties and requires deputies appointed by constables to meet minimum peace officer qualifications as prescribed by the Arizona Peace Officer Standards and Training Board.

concealed weapons permit; felony convictions (H.B. 2634) – Chapter 269

Allows a person who has been convicted of a felony to obtain a concealed carry weapons permit if either the conviction has been expunged, set aside or vacated or the person's rights have been restored and the person is not a state or federal prohibited possessor.

census; precinct line freeze (H.B. 2793) – Chapter 154

Retroactive to August 1, 2008, prohibits, from August 1, 2008, to December 31, 2010, the board of supervisors of each county from changing precinct lines but allows the subdivision of precincts for administrative purposes or to provide multiple polling places. Requires, for multiple polling places within a precinct, the board of supervisors to consider the particular population characteristics of each precinct.

ballot measures; publicity pamphlets (NOW: civil action; affirmative defense) (H.B. 2813) – Chapter

JUDICIARY COMMITTEE (Cont'd.)

Allows, in any civil action, the finder of fact to find the defendant not liable for harm incurred by the claimant committing a felony or misdemeanor act if the claimant was at least 50 percent responsible for the event that caused the claimant's harm.

forgery; drop house property transactions (H.B. 2842) – Chapter 170

Establishes, as a class 4 felony, the offense of using property or real property as a drop house. Provides a defense for a prosecution if the person reports that the property is being used as a drop house after acquiring actual knowledge of the property's use. Expands the definition of human smuggling.

LEGISLATION VETOED

DUI abatement council; chairperson (NOW: definition; partial-birth abortion) (S.B. 1048) – VETOED

Redefines partial-birth abortion to correspond to federal legislation and changes the exceptions to a partial-birth abortion ban, if necessary to save the life of a mother, by: 1) limiting an illness to a physical illness; 2) limiting an injury to a physical injury; and 3) adding a life-endangering physical condition caused by or arising from the pregnancy itself. Allows a physician accused of performing a partial-birth abortion to seek a hearing before the physician's board with findings admissible at trial and, if convicted, requires a fine, imprisonment for not more than two years or both. Includes a severability clause.

The Governor indicates in her veto message for S.B. 1048 that, as stated in her April 4, 2008, veto letter of H.B. 2769, Arizona physicians are already subject to criminal penalties under the federal statute and she is loathe to introduce more criminal penalties, including incarceration by the state, into the relationship between a woman and her physician.

concealed weapons permit; renewal option (S.B. 1106) – VETOED

Creates the option of a lifetime permit to carry a concealed weapon (CCW).

The Governor states in her veto message that S.B. 1106 would eliminate the opportunity to conduct criminal background checks that are conducted every five years when a CCW permit is renewed. She states that a lifetime permit would make it harder for CCW permit holders to carry weapons outside of Arizona and purchase a firearm without also passing an independent Federal Bureau of Investigation background check. The Governor further indicates that the concept of a lifetime CCW permit is unwise public policy.

misconduct involving weapons; means; transportation (H.B. 2389) – VETOED

Makes changes to misconduct involving weapons, as follows: 1) allows a person to carry a concealed deadly weapon in or on a means of transportation or on property rented by that person without a concealed carry weapons (CCW) permit; 2) expands the type of holster and manner that a weapon may be carried without a CCW permit; 3) classifies, as a class 6 felony, possessing ammunition if the person is a prohibited possessor.

Also, expands the age range for a defense to a prosecution for sexual conduct with a minor if the conduct is consensual.

JUDICIARY COMMITTEE (Cont'd.)

The Governor indicates in her veto message that she vetoed H.B. 2389 at the request of law enforcement. The Governor states that the measure would have added to the level of uncertainty and danger that law enforcement officers face during traffic stops and deprive officers of the ability to confiscate weapons from individuals who ignore CCW laws in transit.

justification; defensive display of firearm (H.B. 2629) – VETOED

Justifies, with exceptions, the defensive display of a firearm.

The Governor states in her veto message that H.B. 2629 is a dangerous escalation that would put the public's safety and law enforcement at risk by creating the ability to display, take hold of and expose a firearm during a verbal dispute. The Governor also indicates that H.B. 2629 is largely unnecessary because current justification laws allow, with some exceptions, a person to display a firearm against another person.

concealed weapons; petty offense (H.B. 2630) – VETOED

Lowers the penalty for carrying a concealed deadly weapon without a concealed carry weapons (CCW) permit from a class 1 misdemeanor to a petty offense, unless it occurs in the commission or attempted commission of a serious offense or violent crime. Prohibits the forfeiture of a weapon from a person convicted of a petty offense for carrying a concealed weapon without a CCW permit.

The Governor indicates in her veto message that H.B. 2630 is nearly identical to S.B. 1629, which she vetoed last year stating that lawful gun owners who wish to carry concealed weapons should comply with Arizona's CCW laws. Additionally, the Governor states that she vetoed this measure at the request of Arizona law enforcement and that serious criminals often carry concealed weapons without permits and law enforcement officers must have the power to arrest the violator and confiscate the deadly weapon. The Governor concludes by saying that the current level of penalties promotes the safety of citizens and law enforcement officers.

partial-birth abortion; definition (H.B. 2769/S.B. 1099) – VETOED

Increases, from a class 6 felony to a class 5 felony, the offense of partial-birth abortion and changes the exceptions to a partial-birth abortion ban, if necessary to save the life of a mother, by: 1) limiting an illness to a physical illness; 2) limiting an injury to a physical injury; and 3) adding a life-endangering physical condition caused by or arising from the pregnancy itself. Redefines partial-birth abortion to correspond to federal legislation and includes a severability clause.

The Governor indicates in her veto message that H.B. 2769 does not conform to the federal partial-birth abortion ban because it does not provide an opportunity for physicians who are prosecuted to seek the professional opinion of their peers as part of their defense and it does not cap the criminal penalty for violation to two years in prison. The Governor also states that the federal partial-birth abortion ban applies throughout the U.S., including Arizona.